

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Tel: 215.963.5000  
Fax: 215.963.5001  
www.morganlewis.com

**Morgan Lewis**  
C O U N S E L O R S   A T   L A W

**William S. Pufko**  
215.963.5519  
wpufko@morganlewis.com

October 4, 2010

**VIA HAND DELIVERY**

Headquarters Hearing Clerk (1900L)  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: In the Matter of Elementis Chromium, LP  
Docket No. TSCA-HQ-2010-5022

Dear Sir/Madam:

This firm represents Elementis Chromium Inc. (formerly Elementis Chromium, LP) in the above matter. Enclosed please find an original and two (2) copies of Respondent's Answer and Affirmative Defenses to Complaint and Notice of Opportunity for Hearing ("Answer"). Please file the original Answer and return one time-stamped copy to the courier.

Please call me if you have any questions. Thank you for your attention to this matter.

Very truly yours,



William S. Pufko

Enclosure

cc: Mark A.R. Chalfant, Esq., USEPA (via email and regular mail)

Figure 1 shows a series of nine line drawings of a person, arranged in a 3x3 grid. The drawings are labeled with numbers 2, 3, 4, 5, 6, and 7 in the bottom right corner of each drawing, indicating the age of the child who drew them. The drawings show a progression from a simple stick figure to a more detailed figure with a head, torso, and limbs. The first drawing (age 2) is a simple stick figure with a circle for a head and a vertical line for a body. The second drawing (age 3) is a stick figure with a head, torso, and limbs. The third drawing (age 4) is a stick figure with a head, torso, and limbs, and a small circle for a head. The fourth drawing (age 5) is a stick figure with a head, torso, and limbs, and a small circle for a head. The fifth drawing (age 6) is a stick figure with a head, torso, and limbs, and a small circle for a head. The sixth drawing (age 7) is a stick figure with a head, torso, and limbs, and a small circle for a head.

Respondent.

Docket No. TSCA-HO-2010-5022

Figure 1 shows a series of nine line drawings of a person, arranged in a 3x3 grid. The drawings are labeled with numbers 2, 3, 4, 5, 6, and 7 in the bottom right corner of each drawing, indicating the age of the child who drew them. The drawings show a progression from a simple stick figure to a more detailed figure with a head, torso, and limbs. The first drawing (age 2) is a simple stick figure with a circle for a head and a vertical line for a body. The second drawing (age 3) is a stick figure with a head, torso, and limbs. The third drawing (age 4) is a stick figure with a head, torso, and limbs, and a small circle for a head. The fourth drawing (age 5) is a stick figure with a head, torso, and limbs, and a small circle for a head. The fifth drawing (age 6) is a stick figure with a head, torso, and limbs, and a small circle for a head. The sixth drawing (age 7) is a stick figure with a head, torso, and limbs, and a small circle for a head.

1. The allegation in this paragraph purports to restate a statutory provision that speaks for itself and any characterization thereof is denied.
2. The allegation in this paragraph is a conclusion of law to which no response is required and, therefore, is denied.
3. The allegation in this paragraph purports to restate a statutory provision that speaks for itself and any characterization thereof is denied.

<sup>1</sup> Elementis Chromium LP was merged into Elementis Chromium GP Inc. on September 10, 2010. Elementis Chromium GP Inc. then changed its name to Elementis Chromium Inc.

4. The allegation in this paragraph is a conclusion of law to which no response is required and, therefore, is denied.

5. Elementis is without knowledge or information sufficient to form a belief as to the truth of that averment in this paragraph and therefore it is denied.

6. Admitted.

7. Denied. Elementis acquired the Castle Hayne Facility in December, 2002.

8. Admitted.

9. Admitted in part; denied in part. It is admitted that Elementis manufactures chromium chemicals. The remaining averment in this paragraph is a legal conclusion to which no response is required and, therefore, is denied.

10. The use of the term “processes” in this paragraph is vague and undefined. As a result, Elementis is without knowledge or information sufficient to form a belief as to the truth of that averment in this paragraph. The remaining averment in this paragraph is a legal conclusion to which no response is required and, therefore, is denied.

11. Admitted in part; denied in part. It is admitted that Elementis distributes in commerce chromium chemicals. The remaining averment in this paragraph is a legal conclusion to which no response is required and, therefore, is denied.

12. Admitted in part; denied in part. It is admitted that Elementis manufactures and distributes in commerce chromic acid, chromic oxide and sodium dichromate. The use of the term “processes” in this paragraph is vague and undefined. As a result, Elementis is without knowledge or information sufficient to form a belief as to the truth of that averment in this paragraph.

13. Denied.

14. Admitted.

15. The use of the term “large” in this paragraph is vague and undefined. As a result, Elementis is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

16. Admitted.

17. Admitted.

18. Admitted in part; denied in part. Elementis admits that chromic acid and sodium dichromate are hexavalent chromium compounds. Elementis denies that chromic oxide is a hexavalent chromium compound.

19. Admitted in part; denied in part. It is admitted that there is a consensus in the medical literature that exposure to hexavalent chromium over certain periods of time may, in some individuals, result in adverse human health effects. Further answering, the relationship between hexavalent chromium exposure and adverse health effects is dose-dependent. It is admitted that inhalation of airborne hexavalent chromium could, in certain circumstances, result in occupational exposure. The remaining averments in this paragraph, including any characterization thereof, are denied.

20. Admitted in part; denied in part. It is admitted that there is a consensus in the medical literature that exposure to hexavalent chromium, a valence state of chromium, for extended periods of time may, in some individuals, result in adverse human health effects. Further answering, the relationship between hexavalent chromium exposure and adverse health effects is primarily dose-dependent. The remaining allegations in this paragraph, including any characterization thereof, are denied.

21. Admitted in part; denied in part. It is admitted that there is a consensus in the medical literature that exposure to hexavalent chromium for extended periods of time may, in some individuals, result in adverse human health effects. Further answering, the relationship between hexavalent chromium exposure and adverse health effects is dose-dependent. The remaining allegations in this paragraph, including any characterization thereof, are denied.

22. Elementis is without knowledge or information sufficient to form a belief as to the truth of that averment in this paragraph and therefore it is denied.

23. Admitted.

24. Admitted in part; denied in part. It is admitted that Elementis obtained a report entitled "Collaborative Cohort Mortality Study of Four Chromate Production Facilities, 1958-1998," which report is a document that speaks for itself. The remaining averments in this paragraph, including any characterization thereof, are denied.

25. Admitted.

26. Admitted.

27. Denied.

28. Admitted.

29. Admitted in part and denied in part. Elementis admits that the chromium industry utilized lime or similar alkali-containing materials to assist in the extraction of hexavalent chromium from chromate ore. Elementis denies the remainder of the averments in this paragraph.

30. Admitted.

31. Admitted.

32. Admitted in part; denied in part. It is admitted that the Industrial Health Foundation (“IHF”) was an association of industrial companies. It is denied that the IHF still exists.

33. Admitted.

34. Admitted.

35. Admitted.

36. Denied. The Chrome Coalition did not sponsor an epidemiological study.

37. Admitted.

38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted.

43. The allegation in this paragraph is a conclusion of law to which no response is required and, therefore, is denied.

44. The referenced report is a document that speaks for itself and any characterization thereof is denied.

45. The referenced report is a document that speaks for itself and any characterization thereof is denied.

46. The referenced report is a document that speaks for itself and any characterization thereof is denied.

47. Denied. By way of further response, the use of the term “critical” in this paragraph is vague and undefined. As a result, Elementis is without knowledge or information sufficient to form a belief as to the truth of whether the referenced report “fills a critical gap.”

48. The referenced report is a document that speaks for itself and any characterization thereof is denied.

49. Denied. By way of further response, Complainant had adequate knowledge of the information contained in the referenced report.

50. The allegation in this paragraph is a conclusion of law to which no response is required and, therefore, is denied.

51. The allegation in this paragraph is a conclusion of law to which no response is required and, therefore, is denied.

52. The allegation in this paragraph is a conclusion of law to which no response is required and, therefore, is denied.

**WHEREFORE**, Elementis respectfully requests that the Presiding Officer enter judgment in its favor and against Complainant, and such other relief as the Presiding Officer deems just and proper.

### **AFFIRMATIVE DEFENSES**

Pursuant to the Consolidated Rules, 40 C.F.R. § 22.15, Elementis hereby sets forth the following Affirmative Defenses to Complainant’s Complaint:

#### **First Affirmative Defense**

Complainant was adequately informed of the information described in the September 27, 2002 Collaborative Cohort Mortality Study of Four Chromate Production Facilities, 1958-1998 at the time of Elementis’s alleged receipt thereof.

### **Second Affirmative Defense**

Elementis had actual knowledge that Complainant was adequately informed of the information described in the September 27, 2002 Collaborative Cohort Mortality Study of Four Chromate Production Facilities, 1958-1998 at the time of Elementis's alleged receipt thereof.

### **Third Affirmative Defense**

At the time of Elementis's alleged receipt of the September 27, 2002 Collaborative Cohort Mortality Study of Four Chromate Production Facilities, 1958-1998, Complainant was aware of information indicating an increased risk of cancer among certain workers with high levels of exposure in chromium processing plants.

### **Fourth Affirmative Defense**

Complainant's claim is barred by the applicable statute of limitations.

### **Fifth Affirmative Defense**

Complainant's own published guidance and interpretation of law stated that the Toxic Substances Control Act did not require information contained in the September 27, 2002 Collaborative Cohort Mortality Study of Four Chromate Production Facilities, 1958-1998 to be disclosed to Complainant.

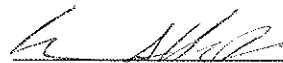
### **RESERVATION AND NON-WAIVER**

Elementis expressly reserves and does not waive any additional and further defenses as may be revealed during discovery or upon receipt of additional information.

### **REQUEST FOR HEARING**

Pursuant to the Consolidated Rules, 40 C.F.R. § 22.15(c), Elementis hereby requests a hearing on this matter.





---

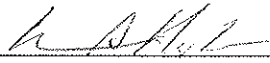
John J. McAleese, III  
Ronald J. Tenpas  
William S. Pufko  
MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103  
(215) 963-5000

*Attorneys for Respondent Elementis  
Chromium Inc.*

**CERTIFICATE OF SERVICE**

I, William S. Pufko, hereby certify that on October 4, 2010, I served a copy of Respondent's Answer and Affirmative Defenses to Complaint and Notice of Opportunity for Hearing, via e-mail and first class mail on the following:

Mark A.R. Chalfant, Esq.  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
U.S. Environmental Protection Agency  
1595 Wynkoop Street (Mailstop: 8ENF-L)  
Denver, CO 80202-1129

  
\_\_\_\_\_  
William S. Pufko